DAVID ABRAHAM SAMSON PAUL A

v.

SYED SHAHIR SYED MOHAMUD & ORS

COURT OF APPEAL, PUTRAJAYA B
RAUS SHARIF PCA
RAMLY ALI JCA
SYED AHMAD HELMY JCA
[CIVIL APPEAL NO: W-04-690-2010]
16 MARCH 2012 C

LEGAL PROFESSION: *Professional discipline - Misconduct - Legal Profession Act 1976, s. 94(3)(c) - Legal fees - Retention of purchase proceeds for other legal matters - Failure to account for monies received in appellant's capacity as solicitor - Found guilty by Disciplinary Committee and High Court - Whether findings erroneous - Whether appellant entitled to set-off legal fees under r. 7(a)(v) of the Solicitors' Account Rules 1990 - Whether appellant prejudiced - Whether penalty appropriate* D

The appellant, an advocate and solicitor, had acted for the Malaysian Trade Union Congress ('the complainant') in a sale and purchase agreement ('the SPA') for the sale of the MTUC building ('the property'). A part of proceeds of the sale, in the sum of RM750,000, was retained by the appellant for other legal matters. As prescribed by cls. 4.1 and 5.4 of the SPA the appellant was required to hold an initial amount of RM380,000 as stakeholder and to place the said sum in a deposit account with a bank. By virtue of cl. 6.2.1 of the SPA, no sum was required to be retained by the complainant if real property gains tax ('RPGT') was payable. Upon exemption of the RPGT, the complainant requested for the release of the RM750,000 and the accrued interest thereon. However, the appellant averred that the RM750,000 was never retained for RPGT and that it was to be utilised as payment for the appellant's interim fees since the final account could not be determined at the material time. Subsequently, the complainant lodged a complaint against the appellant, for not accounting for monies received by him in his capacity as their solicitor and in particular, for his failure to account for the sum of RM750,000. By virtue of s. 103B of the Legal Profession Act 1976 ('the Act'), a Disciplinary Committee ('the Committee') carried out an inquiry against the appellant. The E F G H I

appellant was found guilty of contravening s. 94(3)(c), (k), (m), (n) and (o) of the Act. The committee recommended that the appellant be struck off the rolls of Advocates and Solicitors and this finding and Order was endorsed by the Disciplinary Board ('the Board'). In the High Court, the appellant applied to set aside the order but the High Court upheld the Board's decision and dismissed the application. Hence, the appellant appealed. In the present appeal, the appellant submitted that both the Committee and the High Court had erred in their findings by failing to appreciate evidence that the appellant had the right to set-off the RM750,000 for his interim fees under r. 7(a)(v) of the Solicitors' Account Rules 1990 ('the Rules'). To support his contention, the appellant brought forth the evidence of a letter ('the letter') which he wrote to the complainant confirming an agreement that his fees and disbursements would be deducted from the monies received from the sale of the property and a statutory declaration affirmed by Dr D. David, the complainant's then secretary-general ('the SD'). The issue that arose before the court was: (i) whether the appellant had the right to set-off; (ii) whether the appellant was prejudiced; and (iii) whether the penalty imposed was appropriate.

Held (dismissing appeal with costs)
Per Syed Ahmad Helmy JCA delivering the judgment of the court:

(1) The Committee and the High Court had considered the evidence of the letter. Hence, no prejudice was caused to the appellant. The Committee found that the letter did not give the appellant blanket authority to deduct his fees or interim fees as and when he liked. Further, the Committee and the High Court had concluded that the evidence of the then secretary general of the complainant had no bearing on their decision. (para 20-21)

(2) From a plain reading of r. 7(a)(v) of the Rules, it can be gathered that two requirements had to be satisfied, namely proof of delivery of the bill and the RGPT monies held would be applied towards such costs. The evidence adduced fell short of the fulfilment of these two prerequisites. Both the Committee and the High Court found that the appellant had

off-set his legal fees from the RPGT sum without delivering his bill of costs and notifying the complainant of his intention to do so (para 24).

(3) The Committee and the High Court had not erred in the conduct of the hearing and in its application of the relevant legal principles. The findings of the Committee which was affirmed by the High Court, was in accordance with the evidence adduced and the sentence passed did not warrant any appellate interference (para 26).

(4) There was an element of deceit and dishonesty in the present appeal which justified the conclusion of the findings of both the Committee and the High Court of transgression of s. 94(3)(c) of the Act. The misconduct was of such a nature that it warranted a penalty which had not only a punitive effect but also a deterrent one. The appellant, who had a long standing relationship with the complainant, should have been forthright and transparent in his dealings and discharged his duties promptly, conscientiously and diligently instead of misconducting himself. (paras 35-37).

Bahasa Malaysia *Translation of Headnotes*

Perayu, seorang peguambela dan peguamcara, telah mewakili Kongres Kesatuan Sekerja Malaysia ('KKSM'/'pengadu') dalam suatu perjanjian jual beli ('PJB') bagi jualan bangunan KKSM ('hartanah tersebut'). Sebahagian daripada hasil jualan tersebut, yang berjumlah sebanyak RM750,000, dipegang oleh perayu bagi perkara-perkara guaman yang lain. Seperti yang diperuntukkan oleh fasal 4.1 dan 5.4 PJB, perayu dikehendaki memegang jumlah awalan sebanyak RM380,000 sebagai pemegang amanah dan seterusnya mendepositkan jumlah tersebut ke dalam akaun deposit bank. Merujuk kepada fasal 6.2.1 PJB, tiada jumlah yang perlu disimpan oleh pengadu jika cukai keuntungan hartanah ('CKT') telah dibayar. Dengan pengecualian CKT, pengadu meminta agar perayu melepaskan RM750,000 tersebut bersama-sama dengan faedah terakru. Namun begitu, perayu menegaskan bahawa beliau tidak pernah memegang jumlah RM750,000 tersebut bagi tujuan CKT dan bahawa ia digunakan sebagai bayaran untuk yuran interim kerana akaun akhir tidak dapat ditentukan pada masa material. Pengadu kemudiannya membuat aduan terhadap perayu

kerana tidak bertanggungjawab ke atas wang yang diterimanya sebagai peguam mereka dan khususnya, bagi kegagalan perayu untuk bertanggungjawab bagi jumlah RM750,000 tersebut. Bersandarkan s. 103B Akta Profesion Undang-Undang 1976 ('Akta'), suatu Jawatankuasa Tatatertib ('Jawatankuasa') telah menjalankan siasatan terhadap perayu dan perayu didapati bersalah kerana melanggar s. 94(3)(c), (k), (m), (n) dan (o) Akta. Jawatankuasa tersebut mencadangkan agar perayu dibatalkan daripada senarai Peguambela dan Peguamcara dan keputusan serta Perintah tersebut disahkan oleh Lembaga Tatatertib ('Lembaga'). Di Mahkamah Tinggi, perayu memohon untuk mengetepikan Perintah tersebut namun Mahkamah Tinggi mengekalkan keputusan Lembaga dan menolak permohonan perayu. Maka, perayu merayu. Dalam rayuan ini, perayu menghujahkan bahawa kedua-dua Jawatankuasa dan Mahkamah Tinggi telah terkhilaf dalam dapatan masing-masing apabila kedua-duanya gagal untuk menpertimbangkan bukti bahawa perayu berhak ke atas penolakan RM750,000 sebagai bayaran bagi interim di bawah k. 7(a)(v) Kaedah-kaedah Akaun Peguamcara 1990 ('Kaedah-kaedah'). Bagi menyokong hujahannya, perayu mengemukakan sebagai bukti, surat yang ditulis olehnya kepada pengadu yang mengesahkan perjanjian bahawa yuran dan pembayaran akan ditolak daripada wang yang diterima daripada jualan hartanah dan suatu akuan berkanun yang diikrarkan oleh Dr D. David, setiausaha agung ('SA') pengadu ketika itu. Isu yang timbul di hadapan mahkamah adalah: (i) sama ada perayu mempunyai hak penolakan; (ii) sama ada perayu telah diprejudis; dan (iii) sama ada hukuman yang dijatuhkan berpatutan.

Diputuskan (menolak rayuan dengan kos)
Oleh Syed Ahmad Helmy HMR menyampaikan penghakiman mahkamah:

(1) Jawatankuasa dan Mahkamah Tinggi telah mempertimbangkan surat tersebut sebagai keterangan. Dengan itu, perayu tidak diprejudiskan. Jawatankuasa mendapati bahawa surat tersebut tidak memberikan kuasa secara menyeluruh kepada perayu untuk memotong yuran atau bayaran interim sesuka hatinya. Tambahan lagi, Jawatankuasa dan Mahkamah Tinggi telah memutuskan bahawa keterangan setiausaha agung pengadu tidak mempunyai sebarangan kaitan dengan keputusan mereka.

(2) Berdasarkan pembacaan ringkas k. 7(a)(v) Kaedah-kaedah, boleh disimpulkan bahawa dua keperluan perlu dipenuhi, iaitu bukti penghantaran bil dan wang CKT akan digunakan untuk kos-kos tersebut. Keterangan tersebut tidak memenuhi dua prasyarat yang dinyatakan. Jawatankuasa dan Mahkamah Tinggi mendapati bahawa perayu telah menolak yuran guamannya daripada jumlah CKT tanpa menghantar bil kos dan tanpa memaklumkan kepada pengadu akan niatnya untuk berbuat demikian.

(3) Jawatankuasa dan Mahkamah Tinggi tidak terkhilaf dalam menjalankan perbicaraan dan dalam pemakaian prinsip-prinsip undang-undang yang berkaitan. Dapatan Jawatankuasa yang disahkan oleh Mahkamah Tinggi, adalah selaras dengan keterangan yang dikemukakan dan hukuman yang dijatuhkan tidak memberi sebarang peluang bagi campurtangan rayuan.

(4) Terdapat unsur penipuan dan tidak jujur dalam rayuan ini dan ini memberi justifikasi kepada keputusan Jawatankuasa dan Mahkamah Tinggi berkenaan pelanggaran s. 94(3)(c) Akta. Salah laku tersebut memerlukan hukuman yang bukan sahaja mempunyai kesan punitif tetapi juga bertindak sebagai suatu penghalang. Perayu, yang mempunyai hubungan yang lama dengan pengadu, seharusnya berterus-terang dan telus dalam urusannya dan menjalankan tanggungjawabnya dengan segera, jujur dan tekun dan bukannya melakukan salah laku.

Case(s) referred to:
Bolton v. Law Society [1994] 2 All ER 486 ***(refd)***
Law Society of Singapore v. Ravindra Samuel [1999] 1 SLR 696 ***(refd)***
Re A Practitioner [1984] 36 SASR 591 ***(refd)***

Legislation referred to:
Legal Profession Act 1976, ss. 93, 94(3)(c), (k), (m), (n), (o), 103B
Solicitors' Account Rules 1990, r. 7(a)(v)

For the appellant - M/s Sreenevasan Young
For the 1st & 2nd respondent - M/s P Kuppusamy & Co
For the 3rd respondent - M/s JT Chong Assoc

[Appeal from High Court, Kuala Lumpur; Originating Summons No: R4-17-12-2010]

Reported by Najib Tamby

A

JUDGMENT

Syed Ahmad Helmy JCA:

[1] The appellant, a practising advocate and solicitor was found guilty of professional misconduct consequent to a disciplinary enquiry conducted by the Disciplinary Committee (Committee) pursuant to s. 103B of the Legal Profession Act 1976 (LPA). In finding the appellant guilty for contravention of s. 94(3)(c), (k), (m), (n) and (o) of the LPA, the Committee recommended that the appellant be struck off the rolls of advocates and solicitor which finding and recommendation was endorsed by the Disciplinary Board (Board) constituted under s. 93 of the LPA who made an order accordingly on 5 February 2010 (the Order). The Order of the Board was appealed against to the High Court but was dismissed on 20 December 2010.

[2] Dissatisfied with the orders of the Board and the court below the appellant pursued his appeal before us. After hearing the parties, we adjourned the matter for our consideration and decision. We now give our decision and the reasons for the same.

[3] The subject matter of the disciplinary proceedings against the appellant was premised on a written complaint lodged by the Malaysian Trade Union Congress (MTUC) (the Complainant) made on 8 August 1996 against him for not accounting for monies received by him in his capacity as their solicitor and in particular to the failure to account for the sum of RM750,000.

[4] The sum of RM750,000 represents part of the proceeds of sale of the MTUC building (the Property) to Thrifty Realty Sdn Bhd for RM15 million pursuant to a sale and purchase agreement dated 1 June 1993 (the SPA). The appellant by virtue of having been retained to act for MTUC's other legal matters, acted for MTUC in the sale of the Property.

[5] The highlight of the sale transaction was the several provision in the SPA which obligated the appellant to hold the initial payment of RM380,000 as stakeholder and to place the said sum in a deposit account with a bank – see cls. 4.1 and 5.4 of the SPA. Clause 6.2.1 provides that no sum is required to be retained by MTUC in the event no real property gains tax (RPGT) is payable. The sale transaction having been completed the balance of the purchase price of RM7,763,934.90 was released to MTUC on 8 August 1995.

[6] Coming back to the sum of RM750,000 the appellant had by letter dated 18 November 1994 to MTUC informed them that the sum was retained by him for RPGT and pending adjudication of RPGT he had placed:

(a) RM7.5 million in a trust account.

(b) RM705,785.40 in client account for payment of RPGT, legal fees and expenses.

(c) In the event RPGT was not payable the said sum shall be paid to MTUC inclusive of all interest but less legal fees and expenses incurred in the said sale.

[7] Upon exemption of RPGT being granted MTUC by letters dated 11 September 1995, 7 November 1995, 25 January 1996, 20 June 1996 and 4 July 1996 requested for the release of the said sum of RM750,000 and the accrued interest thereon but received no response except for a reply through letter dated 10 July 1996 that the RPGT sum was only a "reserve figure" for accounting purposes.

[8] Being stonewalled and not eliciting any response MTUC instructed Skrine & Co to demand for the release which was duly executed by Skrine & Co through their letter dated 15 July 1996.

[9] The appellant responded to the letter by his reply of 25 July 1996 whereupon he claimed that the sum of RM750,000 was never retained for RPGT and was to be used in payment of the appellant's interim fees, as the final account could not be determined at the material time – hence that accounted for its entry for accounting purposes. The appellant also forwarded interim invoices for work done for the period 1992 to 1996.

[10] In advancing his claim that the RPGT sum was offsetted by him for his interim fees he relied on an oral agreement with the then Secretary General of MTUC Dr. V. David as reflected in a letter dated 22 October 1992 written by him to MTUC and also a statutory declaration of Dr. V. David affirmed on 22 September 1993.

[11] Since the appellant's defence before the Disciplinary Committee rested heavily on the letter dated 22 October 1992 and Dr. V. David's statutory declaration of 22 September 1993 the circumstances behind its evolvement necessitates reflection.

[12] A very pertinent point that comes to the fore in respect of the letter of 22 October 1992 and the statutory declaration was that it was never produced during the inquiry before the Investigating Tribunal which had finalised its report on 31 May 2002 nor was it mentioned in the several reply letters of the appellant to MTUC and/or its solicitors. The first time that the said letter surfaced was when it was produced before the Disciplinary Committee on 25 June 2003 and no explanation as to why it could not be produced earlier before the Investigating Tribunal was forthcoming. The circumstances aforesaid would invariably have a bearing on the weightage to be accorded to it.

[13] Against the background of the sequential events aforesaid and the contemporary documents adduced and after analysing the evidence proffered the Disciplinary Committee arrived at the following findings.

(a) There are glaring contradictions between the appellant's explanation and several earlier letters written by him with regards to the RPGT sum.

(b) There was utilisation of the sale proceeds towards deduction of his fees.

(c) Failure on the part of the appellant to place the RPGT sums on fixed deposits.

(d) The letter dated 22 October 1992 written by the appellant to MTUC was not a blanket authority nor an authorisation to the appellant to deduct his fees or interim fees as and when he liked.

(e) The lump sum fees of RM281,000 and RM380,000 were grossly excessive in all the circumstances.

(f) There was no evidence produced to show that the appellant had notified MTUC that the monies held in his client's account were withdrawn towards payment of costs and fees.

[14] The High Court at the hearing of the appellant's application to set aside the Disciplinary Board order upheld the Board's decision and concluded that the Disciplinary Board's findings of misconduct was supported by the evidence and that the appellant breached the provisions of the SPA in the manner in which he retained and deducted the monies for his legal fees. In short there was concurrent findings by the High Court.

[15] Learned counsel for the appellant in the appeal before us submitted that the nub of the issue for determination was whether the appellant was entitled to set off the three bills of cost which he had rendered to the MTUC – if he was entitled to do so then the MTUC's complaint and subsequent findings of misconduct on the part of the appellant cannot be sustained. It is the submission of learned counsel that based on the evidence placed before the Committee and the court below the Committee erred is not finding that the appellant has the right of setoff.

[16] In support of his submission on a solicitor's right of set-off learned counsel for the appellant adverted to the following evidence adduced before the Disciplinary Committee.

(a) The letter dated 22 October 1992 from the appellant to MTUC confirming an agreement that appellant's fees and disbursements for all work done shall be deducted from the monies received from the sale of the MTUC building.

(b) The statutory declaration of Dr. V. David dated 22 September 2003 which the appellant contends was overlooked by the Disciplinary Committee.

(c) The three bill of costs dated 17 June 1993, 1 August 1994 and 25 September 1994 which the appellant submits were delivered to and received by MTUC.

(d) Rule 7(a)(v) of the Solicitors' Account Rules 1990 which provides for the right of set-off.

[17] In advancing his argument learned counsel stressed that the erroneous appreciation of evidence by both the Disciplinary Committee and the court below has resulted in evidence favourable to the appellant not being taken into consideration. The misappreciation of evidence relates to the Committee's findings that there was no evidence produced to show that the appellant had notified MTUC that the monies held were withdrawn and applied in satisfaction of the costs of fees as contained in the interim bills which finding was occasioned by the oversight of the Committee in overlooking the terms of the letter of 22 October 1992 and the evidence of Dr. V. David. Had this aspect of the evidence which is favourable to the appellant been considered by the Committee and by extension the court below would not have fallen into error.

[18] The appellant's submission of the Committee's failure to consider evidence favourable to the appellant was premised on the material discrepancies appearing in the notes of proceedings forwarded to the parties from time to time upon the conclusion of each hearing and that as contained in the bundle of documents forwarded to the appellant by the Board pertaining to the record of the evidence of Dr. V. David at his residence on 10 October 2003. The omission according to learned counsel for the appellant has severely prejudiced the appellant.

[19] The material discrepancies in the notes of proceedings was addressed by the learned High Court judge who concluded that by reason of the appellant's failure to furnish particulars of the discrepancies and its consequential effect on the Disciplinary Committee's findings the challenge cannot be sustained. The learned judge in rejecting the challenge though acknowledging that the notes of proceedings of 10 October 2003 on Dr. V. David's evidence given at his residence was not referred to by the Disciplinary Committee in its report nevertheless concluded the failure as such had no bearing on the Disciplinary Committee's findings. The court reasoned that the Disciplinary Committee had taken into consideration the effect of the appellant's letter of 22 October 1992 and hence no prejudice can be said to be occasioned – see p. 29 of the appeal record. As stated in the earlier part of our judgment the evolvement and timing of the surfacing of the letter of 22 October 1992 was fraught with suspicion occasioned by the absence of its mention in the replies to the several written complaints and demands of MTUC and to the Investigating Tribunal. It is laced with an element to deceive and his conduct unbefitting of an advocate and solicitor falling within the scope of s. 94(3) of the Legal Profession Act 1976.

[20] In our view the consideration of the letter aforesaid evidences the Disciplinary Committee's acceptance that the letter correctly records the subject matter of the teleconversation namely the evidence of Dr. V. David given at his house on 10 October 2003 and in the statutory declaration dated 22 September 2003. Hence no prejudice is caused to the appellant. The point to note is the unmistakeable explicit finding of the Disciplinary Committee that the letter did not give the appellant blanket authority to deduct his fees or interim fees as and when he liked.

[21] Further the Disciplinary Committee's and High Court's conclusion that the evidence of Dr. V. David has no bearing on its decision emanated from the Disciplinary Committee's visit to Dr. V. David where from the evidence recorded by Disciplinary Committee it can be inferred his incoherent and unreliable behaviour.

[22] Adverting to the appellant's reliance on r. 7(a)(v) of the Solicitor's Account Rules 1990 to justify his entitlement to "set-off" regretfully it cannot be countenanced as the successful invocation of the rule requires the fulfilment of the prerequisites therein.

[23] Rule 7(a)(v) of the Solicitors' Account Rules 1990 provides as follows:

> **7. Drawing of money from client account**
>
> There may be drawn from client account
>
> (a) in the case of client's money:
>
> (v) money properly required for or towards payment of the solicitor's costs where a bill of costs or other written intimation of the amount of the costs incurred has been delivered to the client and the client has been notified that money held by him will be applied towards or in satisfaction of such costs.

[24] From a plain reading of the section two requirements must be satisfied, namely proof of delivery of the bill and the RPGT monies held will be applied towards such costs. The evidence adduced falls short of the fulfilment of the two prerequisites above. The Disciplinary Committee and the court found that the appellant had off-setted his legal fees from the RPGT sum without delivering his bill of costs and notifying MTUC of his intention to do so.

[25] The appellant's counsel in the course of his submission sought to capitalise on the learned High Court judge's decision overruling the findings of the Disciplinary Committee on the excessiveness of the three bills and its consequential unfairness and prejudicial effect to the appellant as misconduct under s. 94(m) of the Legal Profession Act. Though the learned High Court judge ruled as erroneous the Committee's findings of the excessiveness

of the three bills and its prejudicial effect nevertheless in our view the ruling aforesaid of the High Court Judge does not negate the whole order as it is only limited to one category of misconduct namely that of sub paragraph (m) of s. 94(3) LPA. The other acts of misconduct found by the Committee under s. 94(3)(c), (k), (n) and (o) of the LPA remained intact and was affirmed by the learned judge as appears in her grounds of judgment at pp. 32-33 of the appeal record where she stated:

> The cumulative effect of the appellant's wrongful conduct in retaining and deducting his client's money, a case of misconduct under Section 94(3)(c), (k), (n) and (o) of the Legal Profession Act 1976 has been made out. There is no misdirection committed by the DC as alleged by the appellant that warrant interference by this Court.

[26] We have scrutinised the appeal record in depth and given serious consideration to the submissions both oral and written made by the parties and it is our unanimous view that both the Disciplinary Committee and the court below did not err in the conduct of the hearing and its application of the relevant legal principles. The findings of the Disciplinary Committee which was affirmed by the High Court was in accord with the evidence adduced and the sentence passed does not warrant any appellate interference.

[27] The appellant it should be recalled was found guilty of misconduct under four sub-paragraphs of s. 94(3) LPA, namely:

(c) dishonest or fraudulent conduct in the discharge of his duties;

(k) breach of any provision of the Act or of any rules thereunder or any direction or ruling of the Bar Council;

(n) gross disregard of his client's interests; and

(o) being guilty of any conduct which is unbefitting of an advocate and solicitor or which brings or is calculated to bring the legal progression into disrepute.

[28] The definition of misconduct is laid down in s. 94(3) of the LPA. It means conduct or omission to act in Malaysia or elsewhere by an advocate and solicitor in a professional capacity or otherwise which amounts to grave impropriety and includes the

15 instances as detailed therein. The definition aforesaid is not exhaustive and being widely worded would clearly encompass both dishonest conduct in the discharge of professional duty and fraudulent conduct or conduct otherwise unbefitting a solicitor and the conduct of the appellant herein falls within the scope.

[29] We shall now address the issue of the appropriate penalty. Learned counsel for the appellant in his address on the penalty imposed urged us that the circumstances of the case does not warrant the extreme punishment of being struck off the rolls to be imposed.

[30] The appropriateness penalty issue would invariably involve consideration of not only the interests of the appellant but also the wider interests of the public and the profession. The legal profession is a honourable one which holds a very commanding and respectable standing in society as it is one of the vehicles for the pursuit of justice. Hence honesty and integrity is a cardinal characteristic of this noble profession which plays an indispensable part in the administration of justice.

[31] In deciding the appropriateness of the penalty it is instructive to appraise ourselves of the guidelines laid down by the following two cases.

[32] In *Bolton v. Law Society* [1994] 2 All ER 486 Sir Thomas Bingham MR at p. 491 said:

> *Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal.* Lapses from the required high standard may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. *In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors.* Only infrequently, particularly in recent years, has it been willing to order the restoration to the Roll of a solicitor against whom serious dishonesty had been established, even after a passage of years, and even where the solicitor had made every effort to re-establish himself and redeem his reputation. *If a solicitor is not shown to have acted dishonestly, but is shown to have*

A *fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking-off order will not necessarily follow in such a case, but it may well.*

B **[33]** In *Re A Practitioner* [1984] 36 SASR 591 which was a case of criminal misappropriation of monies by a solicitor, King CJ at p. 593 stated:

I cannot regard suspension as an adequate response to the type
C of unprofessional conduct in which this practitioner engaged. *The proper use of suspension is, in my opinion, for those cases in which a legal practitioner has fallen below the high standards to be expected of such a practitioner, but not in such a way as to indicate that he lacks the qualities of character and trustworthiness which are the necessary attributes of a person entrusted with the responsibilities of a legal*
D *practitioner.*

[34] The principles on disciplinary sentencing as distilled from the authorities aforesaid are twofold:

E (1) where a solicitor has acted dishonestly, the appropriate order is struck off the roll of solicitors.

(2) if a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness he will nonetheless be struck off
F the roll, as opposed to merely being suspended, if his lapse is such as to indicate that he lacks the qualities of character and trustworthiness which are the necessary attributes of a person entrusted with the responsibilities of a legal practitioner.

G **[35]** The absence of any finding of dishonesty does not *per se* make the sentence of being struck off the rolls excessive for the court has in the absence of dishonesty struck off the roll an advocate and solicitor who had fallen below the standards of integrity, probity and trustworthiness – see *Law Society of Singapore*
H *v. Ravindra Samuel* [1999] 1 SLR 696.

[36] Applying the principles aforesaid to the facts of this case as we have related in the earlier part of the judgment herein that there is an element of deceit and dishonesty being present which
I in our view justified the conclusion of the findings of both the Committee and the High Court of transgression of sub-paragraph

(c) of s. 94(3) of the LPA – the misconduct is of such a nature that it warrants a penalty which have not only a punitive affect but a deterrent one. The appellant who had a long standing relationship with MTUC should be forthright and transparent in his dealings and discharge his duties promptly, conscientiously, and diligently instead of misconducting himself in the manner he did.

[37] We do not see any justification for us to interfere in the penalty meted out which in our view is appropriate and just in the circumstances of the case. The appeal is accordingly dismissed with costs. As the 3rd respondent is not claiming any costs no order as to costs is made in favour of the 3rd respondent. The 1st and 2nd respondent is awarded costs in the sum of RM1,000. Deposit to the 1st and 2nd respondent to account of fixed costs.